

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA -- RENO**

THE PIATELLI COMPANY, INC., a  
California corporation; MARIO PIATELLI,  
an individual; JACK G. FROST, an individual;  
JACK GIBSON FROST, INC., a California  
Corporation; J.D. HUNT, an individual;  
HUNT BROS. PRODUCING CO., INC.,  
an Oklahoma corporation; and ROBERT  
DIERKING, an individual,

**CASE NO: 3:12-cv-00225-RCJ-WGC**

Plaintiffs,

vs.

ALAN CHAMBERS, an individual;  
LAURA CHAMBERS, an individual, and  
DOES 1 through 10, inclusive,

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

Defendants.

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11 *Robert Dierking*

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16 *Laura Chambers*

17 **REPORT AND RECOMMENDATION OF**  
18 **U.S. MAGISTRATE JUDGE**

19 ROBERT A. McQUAID, JR., United States Magistrate Judge.

20 This Report and Recommendation is made to the Honorable Robert C. Jones,  
21 United States District Judge. The action was referred to the undersigned Magistrate  
22 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

23 Plaintiffs filed a Motion To Enforce Settlement [#49], Plaintiffs' filed a Notice of  
24 None Opposition [#54], Defendants' filed an untimely response [#55] and Plaintiffs' filed  
25 a reply in support of their motion [#61].

26 The Court attended the settlement conference proceeding held May 7, 2014, has  
27 thoroughly reviewed the record, and held a hearing on Plaintiffs' Motion to Enforce  
28 Settlement on June 18, 2014, and recommends that the District Court enter an order  
enforcing the settlement agreement and dismiss this case with prejudice, retaining  
jurisdiction to enforce the settlement.

1           **I.       Procedural History**

2           This is an action for Breach of Contract, Intentional Interference with Contractual  
3 Relations, Breach of the Covenant of Good Faith and Fair Dealing, Breach of Fiduciary  
4 Duty, Injunctive Relief, Declaratory Relief, and Damages. The Plaintiffs, THE PIATELLI  
5 COMPANY, INC., a California corporation; MARIO PIATELLI, an individual; JACK G.  
6 FROST, an individual; JACK GIBSON FROST, INC., a California Corporation; J.D.  
7 HUNT, an individual; HUNT BROS. PRODUCING CO., INC., an Oklahoma corporation;  
8 and ROBERT DIERKING, an individual, are seeking damages in their Complaint from  
9 Defendants', ALAN CHAMBERS, as individual, and LAURA CHAMBERS, an individual,  
10 have asserted Counterclaims.  
11

12           Pursuant to the District Court's Order [#47], the parties participated in a  
13 settlement conference with Honorable Robert A. McQuaid on May 7, 2014. After  
14 significant negotiation, the parties agreed to the terms of the settlement that would end  
15 this litigation. The terms of the settlement were placed on the record and Honorable  
16 Robert McQuaid canvassed each of the parties to confirm their agreement to the  
17 settlement. Honorable Robert A. McQuaid also confirmed that counsel for the parties  
18 understood the settlement and would work together to further memorialize the  
19 settlement in a settlement agreement and release of all claims.  
20

21           Immediately after placing the settlement on the record, the parties and their  
22 counsel reconvened at Plaintiffs' counsel's office to draft the settlement agreement.  
23 The parties met for enough time to review and discuss a document that had already  
24 been drafted as an initial draft. Defendants', through their counsel and in person,  
25 suggested revisions to the initial draft. Defendants then left Plaintiffs' counsel's office  
26 with the understanding that requested revisions would be made to the settlement draft  
27  
28

1 and a final draft would be circulated to the Defendants for their approval and execution.  
2 While Defendants were departing Plaintiffs' counsel's office, counsel for Defendants  
3 said he expected his clients would review the Settlement Documents immediately and  
4 that Plaintiffs would hear from Defendants within 24-48 hours of receiving the final draft.  
5 The final draft was sent to Defendants on May 8, 2014.  
6

7 Defendants have refused to execute the Settlement Agreement and Release of  
8 All Claims and any other documents necessary for the settlement (collectively,  
9 "Settlement Documents").  
10

11 As a result of the settlement in this matter, the Court vacated the June 9, 2014  
12 trial date on May 7, 2014 [#48]. As a result of Defendants' refusal to execute the  
13 necessary documents, Plaintiffs filed a Motion to Enforce Settlement [#49].  
14

15 This court has reviewed the records and transcript of the settlement conference  
16 proceeding during which Magistrate McQuaid put the terms of the settlement on the  
17 record in the presence of Plaintiffs and Defendants' counsel. The terms were stated as  
18 follows:

- 19 1. The plaintiffs will have the sole right to advertise, develop, market  
20 and sell this mining property down near Hawthorne without any participation by the  
21 defendants.
- 22 2. The defendants agree not to interfere with any of the marketing or  
23 sales efforts of the plaintiffs and also agree to stay off the property.
- 24 3. The minimal sales price of the property will be \$2 million, and that  
25 will be net of any commission that is owed any real estate agent or broker.
- 26 4. Off of whatever net sales price results, two million or higher, there  
27 will be a payment to the plaintiffs of \$340,000 which represents their costs and  
28

1 attorney's fees to date in this matter.

2 5. The remainder of the sales price will be split 50-50 between the  
3 plaintiffs and the defendants.

4 6. There will be no removal of gold until sale. That excepts, if there  
5 need be for marketing purposes, a very small amount removed, or, if there need be a -  
6 - some kind of a drilling made or something like that, that can be done.

7 7. Any expenses invoiced in advertising, developing marketing and  
8 selling the property other than the commission that I just mentioned will be borne by the  
9 plaintiffs.

10 8. The sale will be handled through an escrow company. The  
11 defendant prefers Cow County Title in Hawthorne, and that's acceptable with  
12 everybody, I think, unless there's some sort of a conflict.

13 9. The Plaintiffs' counsel will prepare a written settlement agreement  
14 stating these settlement terms.

15 10. After the settlement agreement is signed, the parties will stipulate to  
16 dismiss this case, and the lawsuit will end.

17 The Court canvassed each party and their respective counsel to confirm  
18 that everyone understood and agreed to the terms of the settlement agreement and  
19 they all stated on record that they understood and agreed to the terms.

20 The parties met after the settlement conference to draft the Settlement  
21 Documents. Plaintiffs' counsel drafted the Settlement Documents, which set out the  
22 settlement terms the parties agreed to at the settlement conference and includes  
23 additional documents necessary to the settlement. **[Exhibit 1 – attached Settlement**  
24 **Documents]**. The Settlement Documents were delivered to Defendants' counsel for  
25  
26  
27  
28

1 review and signature of Defendants. Defendants refused to sign them; and  
 2 communication between the parties ceased. Defendants obtained new counsel and in  
 3 their opposition to the motion to enforce the settlement agreement, Defendants' state:

- 4 1. Defendants did not fully agree or understand the terms of the settlement.
- 5 2. Defendants' counsel failed to effective advocate on their behalf.
- 6 3. Defendants found the terms of the settlement agreement to be altered, varied  
 7 or added to.

8  
 9 [#55, Defendants' Reply to Motion to Enforce Settlement].

## 10 II. Discussion and Analysis

11  
 12 Courts have inherent authority to enforce settlement agreements between the  
 13 parties in pending cases. *See Metronet Services Corp. v. U.S. West Communications*,  
 14 329 F.3d 986, 1013-1014 (9<sup>th</sup> Cir. 2003). (*cert. granted and judgment vacated on other*  
 15 *grounds by Quest Corp. v. Metronet Services Corp.*, 540 U.S. 1147 (2004); *Doi v.*  
 16 *Halekulani Corporation*, 276 F.3d 1131, 1136-1138 (9<sup>th</sup> Cir. 2002); *In re City Equities*  
 17 *Anaheim, Ltd.*, 22 F.3d 954, 957, 9<sup>th</sup> Cir. 1944).

18  
 19 To enforce a settlement agreement, two elements must be satisfied. *Marks-*  
 20 *Foreman v. Reporter Pub. Co.*, 12 F.Supp. 2<sup>nd</sup> 1089, 1092 (S.D. Cal. 1998). First, the  
 21 settlement agreement must be complete. *Id.*, citing *Maynard v. City of San Jose*, 37  
 22 F.3d 1396, 1401 (9<sup>th</sup> Cir. 1994); *Doi*, 276 F.3d at 1137. Second, the settlement  
 23 agreement must be the result of an agreement of the parties or their authorized  
 24 representatives concerning the terms of the settlement. *Marks-Foreman*, 12 F. Supp at  
 25 1092, citing *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144-1145 (9<sup>th</sup> Cir. 1977),  
 26 *Doi*, 276 F.3d at 1137-1138. Where parties raise objections after the parties agree to a  
 27 settlement, the court may rightfully deny such objections. *Harrop*, 550 F.2d at 1144.

1 Indeed, a settlement agreement is binding even if it is not yet reduced to writing, but is  
2 oral in nature and has been placed on the record. *Harrop*, 550 F.2d 1143 at 1145.

3 The court must first decide whether the settlement was complete. *Marks-*  
4 *Foreman, supra* at 1092. The undersigned Magistrate Judge presided over the  
5 settlement proceedings and participated in detailed discussions with the parties and  
6 their counsel to reach an agreeable settlement. Once the terms were agreed upon,  
7 Defendants did not request any further terms nor did Defendants ever claim that they  
8 expected additional terms to the settlement. Specifically, Defendants never requested a  
9 limitation on the duration for which Plaintiffs would be exclusively responsible for  
10 marketing the mine. Defendants never mentioned such a concern during Plaintiffs'  
11 efforts to document the settlement. Defendants did not mention such a concern in their  
12 "reply" in opposition to the Plaintiffs' Motion to Enforce Settlement. Defendants' first  
13 raised the duration issue at the hearing on Plaintiffs' Motion to Enforce Settlement,  
14 several weeks after Defendants had already agreed to the terms of the settlement.  
15 Further, this Court finds Alan Chambers' affidavit in support of Defendants' Reply in  
16 Opposition to Motion to Enforce Settlement untruthful and unbelievable because it is  
17 vague and directly contradicts Mr. Chambers' prior statements to this Court.  
18 Significantly, Plaintiffs would not have agreed to a duration limitation on their right to  
19 exclusively market the mine.  
20  
21  
22  
23

24 In this case, as in *Doi*, 276 F.3d 1131, the parties spent several hours in a  
25 mediation session and agreed to the settlement of this case. The parties and counsel  
26 then reconvened in open court and placed the material terms of the settlement on the  
27 record. Plaintiffs and Defendants' counsel, agreed and understood that they had a  
28 binding settlement agreement that day and that a written settlement agreement would

1 follow. This is exactly what occurred in this matter.

2 The court has received the transcript during which Magistrate Judge McQuaid  
3 placed the settlement terms on the record and has also reviewed the written Settlement  
4 Documents. The court finds that the oral agreement of the parties and the written  
5 agreement comport with one another and that the settlement was complete.  
6

7 The second question is whether the settlement agreement is the result of an  
8 agreement of the parties or their authorized representatives. *Marks-Foreman, supra*, at  
9 1092. There is no dispute that defendants' agreed to the settlement terms and that they  
10 were reduced to writing. Defendants do not contest that they agreed to the terms  
11 placed on the record and set forth in the Settlement Documents. This Court finds that  
12 the terms of the settlement placed on the record on May 7, 2017 are identical to the  
13 terms of the written Settlement Documents, and that Plaintiffs have not added any new  
14 terms. There is no evidence in the transcript of the settlement conference or otherwise  
15 that Defendants were under duress, that Judge McQuaid or anyone else pressured  
16 Defendants to settle the case, or that Defendants expressed that they were agreeing to  
17 the settlement because they wanted the settlement conference to end. Notwithstanding  
18 Defendants' subsequent misgivings about the settlement to which they agreed, the  
19 agreement embodies the parties' settlement, and it will stand.  
20  
21

### 22 III. Conclusion

23 The parties received what they bargained for at the settlement conference, and  
24 this action is at an end.  
25

26 The parties are advised:

27 1. They may file, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of  
28 the Local Rules of Practice, specific written objections to this Report and



1 Recommendation within fourteen (14) days of receipt. These objections should be titled  
2 "Objection to Magistrate Judge's Report and Recommendation" and should be  
3 accompanied by points and authorities for consideration by the District Court.  
4

5 2. This Report and Recommendation is not an appealable order, and any  
6 notice of appeal pursuant to Rule 4(a)(1), Fed. R. App.P., should not be filed until entry  
7 of the District Court's order.

8 **IV. Recommendation**

9 IT IS THEREFORE RECOMMENDED that the District Court enter an order as  
10 follows:  
11

- 12 1. RATIFYING the Settlement Documents [attached hereto as **Exhibit 1**]  
13 as a binding settlement agreement;
- 14 2. ORDERING the defendants' to perform as agreed pursuant to the  
15 Settlement Documents and to execute the Settlement Document and  
16 all documents necessary to effectuate the settlement agreement;
- 17 3. DISMISSING this case with prejudice but that this Court retains  
18 jurisdiction of this matter for purposes of enforcing the settlement  
19 agreement; and
- 20 4. GRANTING Plaintiffs' motion to enforce settlement agreement [49].  
21

22 IT IS SO ORDERED.

23  
24 DATED: July 8, 2014.

25   
26  
27 United States Magistrate Judge  
28

**EXHIBIT "1"**

**EXHIBIT "1"**

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

### **I. PARTIES**

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is by and between The Piatelli Company, Mario Piatelli, Jack G. Frost, Jack Gibson Frost, Inc., J.D. Hunt, Hunt Bros. Producing Company, Inc., Robert Dierking (collectively, "Plaintiffs"), Alan Chambers and Laura Chambers, (collectively "Defendants"). Plaintiffs and Defendants are referred to herein as the "Parties."

### **II. RECITALS**

WHEREAS a dispute arose between Plaintiffs and Defendants regarding the listing and sale of the mine owned by Lucky Boy Mining and Development, LLC. (the "Dispute and/or Action").

WHEREAS on April 23, 2012, Plaintiffs' filed a Verified Complaint in the United States District Court for the District of Nevada, Case No. 3:12-cv-00225-RCJ-WGC, against Alan Chambers and Laura Chambers and Defendants filed a First Amended Answer and Counterclaim on or about June 5, 2013 (the "Action").

WHEREAS the Parties enter into this Settlement Agreement to formally and finally resolve the issues, allegations, claims, defenses, rights, obligations, and causes of action related to the Dispute and the Action.

### **III. COVENANTS**

In consideration of the recitals set forth above and incorporated herein by reference, and the promises, rights and benefits set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Consideration.
  - a. Plaintiffs shall have exclusive control of the mine owned by Lucky Boy Mining and Development, LLC. ("the Mine"), advertising, negotiations and sale of the mine and full authority to execute any documents to consummate the sale. Defendants agree not to interfere with the sale and negotiations

of the sale of the mine, or the sale proceeds and agree to stay off of and not enter the mine property.

- b. The property must be sold for no less than Two Million Dollars (\$2,000,000.00), and any commission related to the sale shall be added to the sales price.
- c. The sum of Three Hundred Forty Thousand Dollars (\$340,000.00) which includes costs and attorney fees are to be deducted from gross proceeds (excluding commissions), and paid to Plaintiffs.
- d. After the deduction of the \$340,000.00 the net sale proceeds shall be distributed 50% to Plaintiffs and 50% to Defendants.
- e. There is to be no removal of any gold prior to the sale of the mine with the exception of samples and possible drilling for samples for interested buyers from and after May 7, 2014.
- f. Plaintiffs shall bear the costs of advertising and marketing the sale of the mine, except for commissions.
- g. Escrow shall be opened at Cow Country Title Company or First American Title Company.
- h. Defendants shall reasonably cooperate to provide evidence that Plaintiffs have full authority to sell the mine and Defendants shall execute the documents necessary to effect this Agreement.

2. Dismissal of Action. Prior to May 30, 2014 The Parties shall execute a Stipulation and Order to Dismiss the Action with prejudice with each party to pay their own fees and costs except as indicated otherwise herein.

3. Release and Discharge.

a. Plaintiffs' Release of Defendants. Plaintiffs, on behalf of themselves, and their respective heirs, beneficiaries, successors, assigns, representatives, officers, directors, parents, subsidiaries, shareholders and agents

hereby releases and covenants not to sue or encourage others to sue Defendants and/or their respective owners, parents, subsidiaries, affiliates, agents, employees, shareholders, members, representatives, beneficiaries, successors, and assigns on any or all claims, actions, causes of action, suits, debts, sums of money, accounts, covenants, contracts, agreements, representations, warranties, damages, injuries, liabilities and demands whatsoever, in law, equity, arbitration, administrative proceeding or otherwise, whether known or unknown, contingent or fixed, liquidated or unliquidated, arising out of or in any way related to the Parties' Dispute and/or the Action, which Plaintiffs ever had, now has, or hereafter may have. The foregoing release and covenant shall exclude claims to enforce the rights and duties created by this Settlement Agreement.

b. Defendants' Release of Plaintiffs. Defendants, on behalf of themselves and their respective heirs, beneficiaries, successors, assigns, representatives, officers, directors, parents, subsidiaries, shareholders and agents hereby release and covenant not to sue or encourage others to sue Plaintiffs and/or its owners, parents, subsidiaries, affiliates, agents, employees, shareholders, members, representatives, beneficiaries, successors, and assigns on any or all claims, actions, causes of action, suits, debts, sums of money, accounts, covenants, contracts, agreements, representations, warranties, damages, injuries, liabilities and demands whatsoever, in law, equity, arbitration, administrative proceeding or otherwise, whether known or unknown, contingent or fixed, liquidated or unliquidated, arising out of or in any way related to the Parties' Dispute and/or the Action, which Defendants ever had, now have, or hereafter may have. The foregoing release and covenant shall exclude claims to enforce the rights and duties created by this Settlement Agreement.

c. Unknown Claims. The Parties recognize that each of them may have claims against the other of which they are unaware and unsuspecting that arise from the circumstances surrounding the Dispute and/or the Action. Except as otherwise

provided herein, it is the intention of the Parties in entering into this Settlement Agreement that it will deprive each party of such claims and prevent them from asserting them now or in the future. To this end, the Parties waive all rights and benefits conferred upon them by the statutes or common law of any jurisdiction that has the same or similar effect as the provision set forth below:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

4. Compromise of Disputed Claims. This Settlement Agreement is the compromise of disputed claims arising out of, connected with, and relating to the Dispute and/or the Action and is not an admission of liability of any party.

5. Binding Nature of Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, subsidiaries, successors, beneficiaries, representatives and assigns.

6. Attorney Fees. If any action shall be brought on account of any default or breach of, or to enforce any of the obligations, terms, covenants or conditions of the Settlement Agreement, the prevailing party shall be entitled to recover from the other party all of its costs and reasonable attorneys' fees.

7. Entire Agreement of the Parties. This Settlement Agreement is the entire, complete, sole and only understanding and agreement of, by, and between the parties pertaining to the subject matter expressed herein, and there are no independent, collateral, different, or other obligations to be performed, or things to be done, and further, no promise, inducement, or consideration has been agreed to by, or promised on behalf of, either party.

8. Modification. This Settlement Agreement may not be modified, supplemented or amended in whole or in part except by an agreement in writing signed by all of the parties to this Settlement Agreement, and executed in the same manner as this Settlement Agreement. No waiver shall be binding unless executed in writing by

the party making the waiver. No waiver of any of the provisions of this Settlement Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar.

9. Ownership of Claims. Each Party represents and warrants that it is the sole owner of the claims and actions which are waived, released and/or settled by this Settlement Agreement, that there has been no prior assignment or transfer of those claims and actions, and that those claims and actions are not subject to any security interest, lien, or other encumbrance.

10. No Third Party Beneficiaries. This Settlement Agreement is made for the sole and exclusive benefit of the Parties hereto and is not intended to benefit any third party. No such third party may claim any right or benefit or seek to enforce any term or provision of this Agreement.

11. Review of Settlement Agreement by Parties' Attorneys. This Settlement Agreement has been reviewed by attorneys for Plaintiffs and Defendants. For purposes of interpretation, all parties shall be deemed to have been the drafter of this Settlement Agreement.

12. Governing Law; Venue. All disputes regarding this Settlement Agreement shall be governed by the laws of Nevada; venue for any action brought in connection with this Agreement shall be any federal or state court of competent jurisdiction located in Washoe County, Nevada.

13. Severability. All terms and conditions contained herein are severable. If any court of competent jurisdiction finds any term or condition of this Settlement Agreement unenforceable, the court shall interpret this Settlement Agreement as if the Settlement Agreement did not contain such unenforceable term or condition.

14. Authority to Execute Settlement Agreement. Each party and signatory hereto warrants and represents to the other that he/she/it has the power, capacity and authority to enter into and execute this Settlement Agreement.

15. Confidentiality. The Parties and their respective attorneys agree to keep this Settlement Agreement confidential. Therefore, the Parties agree that, except as required by law (including the issuance of a lawful subpoena), the Parties, on behalf of themselves and their respective predecessors, successors, beneficiaries, heirs, and assigns, hereby agree, covenant, represent and warrant that none of them shall, directly or indirectly, or by any means or manner whatsoever, disclose, urge, encourage, cooperate in, cause or permit the disclosure of the contents or substance of this Settlement Agreement or any consideration given or received pursuant hereto. This notwithstanding, the Parties may disclose the fact that they have entered into this Settlement Agreement and that all claims have been dismissed with prejudice, but shall not otherwise disclose the contents or substance of this Settlement Agreement. The Parties may, however, disclose the contents or substance of this Settlement Agreement to their respective attorneys or accountants in order to obtain legal advice or to file tax returns, but only on condition that those attorneys and accountants agree to keep the contents and substance of this Settlement Agreement confidential.

16. Counterpart Signatures. This Agreement can be signed by the Parties in counterpart with each party signing a different copy and in different locations.

**DATED** this \_\_\_\_ day of June, 2014

**DATED** this \_\_\_\_ day of June, 2014

The Piatelli Company, Inc.

\_\_\_\_\_  
Alan Chambers

\_\_\_\_\_  
By: Mario Piatelli  
President

**DATED** this \_\_\_\_ day of June, 2014

**DATED** this \_\_\_\_ day of June, 2014

\_\_\_\_\_  
Laura Chambers

\_\_\_\_\_  
Mario Piatelli

...



DATED this \_\_\_\_ day of June, 2014

Jack Gibson Frost, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

DATED this \_\_\_\_ day of June, 2014.

Jack G. Frost \_\_\_\_\_

DATED this \_\_\_\_ day of June, 2014.

Robert Dierking \_\_\_\_\_

DATED this \_\_\_\_ day of June, 2014.

J.D. Hunt \_\_\_\_\_

DATED this \_\_\_\_ day of June, 2014.

Hunt Bros. Producing Co., Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Authorization**

To Whom It May Concern:

I, Alan Chambers, a Member of the Lucky Boy, LLC, hereby acknowledge that I have irrevocably given full authority to Mario Piatelli or successor President, to negotiate, approve, and execute any documents necessary to consummate a sale of the Lucky Boy Mine and Development, LLC. or the land or mine owned by the LLC.

Dated: June \_\_\_\_, 2014.

\_\_\_\_\_  
Alan Chambers

SUBSCRIBED and SWORN  
to before me this \_\_\_\_ day  
of June, 2014, by Alan Chambers.

\_\_\_\_\_  
Notary Public

**CONSENT**

I, Laura Chambers, consent to the attached authorization executed by my husband, Alan Chambers on June \_\_\_\_, 2014.

Dated: June \_\_\_\_, 2014.

\_\_\_\_\_  
Laura Chambers

SUBSCRIBED and SWORN  
to before me this \_\_\_\_ day  
of June, 2014, by Laura Chambers.

\_\_\_\_\_  
Notary Public